

Summary

I. GENERAL RULES OF THE PROBATE COURT

Rule 2 – Appearances

The subcommittee recommends amending Rule 2

The second sentence of the third paragraph was added to clarify longstanding practice that an attorney could file an appearance for an interested party without such appearance constituting an objection to the petition.

Rule 6 – Return Days

The subcommittee recommends amending Rule 6

The second paragraph was amended as a result of the enactment of the Massachusetts Uniform Probate Code, G.L. c. 190B.

Rule 9 – Depositions and Commissions

The subcommittee recommends repealing Rule 9

The Repeal of Rule 9 reflects that the Rule is outdated and no longer necessary. The Massachusetts Rules of Civil Procedure govern depositions and discovery in probate matters since the adoption of Rule 27A on January 1, 2000.

Rule 10 – Depositions, Manner of Taking

The subcommittee recommends repealing Rule 10

The Repeal of Rule 10 reflects that the Rule is outdated and no longer necessary. The Massachusetts Rules of Civil Procedure govern depositions and discovery in probate matters since the adoption of Rule 27A on January 1, 2000.

Rule 11 – Depositions, Filing and Use

The subcommittee recommends repealing Rule 11

The Repeal of Rule 11 reflects that the Rule is outdated and no longer necessary. The Massachusetts Rules of Civil Procedure govern depositions

and discovery in probate matters since the adoption of Rule 27A on January 1, 2000.

Rule 16 – Will Contests

The subcommittee recommends repealing Rule 16

The repeal of Rule 16 is necessitated by the enactment of G.L. c. 190B, §1-401 (d) (e) and (f) which spells out the procedure for contesting a formal proceeding such as a will contest. See also Probate Court Rule 27B which makes summary judgment under Mass.R.Civ.P.56 available in probate proceedings; and Probate and Family Court Standing Order 1-06–Time Standards for Cases Filed in the Probate and Family Court Department.

Rule 25 – Recording of Papers

The subcommittee recommends repealing Rule 2

The repeal of Rule 25 reflects that the Rule is antiquated and unnecessary as copies of documents are no longer separately hand recorded.

Rule 28 – Signatures to Pleadings

The subcommittee recommends amending Rule 28

The amendment to Rule 28 avoids any possible circularity caused by G.L. c. 190B, §1-310, which provides that any pleading is deemed to be made under oath. Section 1-310 applies to documents signed by parties as well as by counsel, so the amendment to Rule 28 avoids the possible construction that Rule 28 prohibits counsel from signing documents other than returns of service and military affidavits.

Rule 29A – Probate Accounts

The subcommittee recommends amending Rule 29A

Rule 29A has been revised to combine both former Rule 29A and former Uniform Practice XV regarding Probate Accounts.